


IN THE SUPREME COURT OF FLORIDA

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BY: 

MARTHA VALDEZ,
Petitioner,

vs.

Case No. SC08-670

HOMEOWNERS ASSISTANCE GROUP,
Respondent.

PETITIONER'S AMENDED JURISDICTION BRIEF

**ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT COURT OF APPEALS**

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STATEMENTS OF THE CASE AND FACTS

I, Martha Valdez, (Petitioner) sole owner of inherited childhood property that was sold without my knowledge January 18th, 2006 because of unpaid ad valorem taxes. In February, 2006 the respondent/purchaser of taxdeed file a suit to quiet title.

I was not living at the property, property was rented out. I found out of property tax sale quite by accident in February 1,2006 upon attempting to pay the water bill for the property and advised this account had been closed and my security deposit would refunded within 3-6 weeks.

I later found out that the posted door notice(s) were intercepted by another party who withheld such notice purposely from me. The tenant who resided on the property, had personally given door notice to Fernando Fermin, my spouse, whom never notified me.

I, then retained counsel whom filed an Answer along with Affirmative Defenses asserting that I had not received any notice of the tax deed sale of January 18, 2006. "Certified Mailings" (records show all returned unclaimed) nor "Notice of Door Postings" (intercepted by 3rd party). I, Martha Valdez /then Appellant filed Affidavits opposing tax sale, due to lack of "due process", and the belief that Chapter 197 was unconstitutional.

In addition, Fernando Fermin, provided undisputed testimonial not only via

Affidavit but inclusively in person at hearing in Honorable Judge Stuart Simmons Chambers, Fernando testified in person as to the fact that he had obtained door posting from tenant and had neglected to give same to me, the owner. Residence door posting was also never seen by me, nor my son (age 21) nor my daughter (age 24).

In February 2007, Trial Court Judge ruled in favor of Appellee, granting Quiet Title. In it's order the Trial Judge did not repute the validity that I had not received prior notice of impending Tax Sale. In it's Order the Trial Court, did however interpret that "Due Process" had been met when it erroneously relied upon an incorrect facts: FIRST, that Fernando Fermin was also a title owner. SECOND, that their had been no record of "Returned Unclaim Mail", not so as court records show, all Certified Mail had been returned "Un-claimed"

In March 2007, notice of Appeal filed with State Of Florida, Third District Court of Appeals, on March, 2008 Affirmed, citing:

Jones v Flowers, 574 U.S. 220,235 (2006) noting that due process may be met if notice of a tax deed certificate is posted on the front door upon receipt of a certified letter marked as undeliverable); Cusack v Homeowners Assistance Group, LLC, 961 So 999 (Fla. 3d DCA 2007).

SUMMARY OF ARGUMENT

Wherefore, Petitioner respectfully request this Florida Supreme Court review this decision of the district court which is in conflict with prior

decision of the U.S. Court Supeme Supreme Court which has precisely ruled and specifically addressed the un-reliability and pitfalls of door posting being used as a means of "serving due process".

The Lower Courts, have elected to ignore, the fallibility which has occurred in this particular case when renduring its decision. This case reeks as a perfect example of what an "Unconstitutional Act" by the State toward one of its citizens.

Upon close review of this case a Quiet Title Motion in this particular case should never have been granted. Then, as to add insult to injury, this error has been allowed to stand.

ARGUMENT

I

**Whether Door Posting, Intercepted By Intervening
Force, Invalidates Due Process.**

II

**Whether Florida Statues 197.522 has failed to Render Due
Process When It Has Received All Mail Returned "Unclaimed".**

III

**Whether Current State Statute is Enacted
and Yet Still Fails To Provide Due Process.**

ARGUMENT I - Whether Door Posting, Intercepted By Intervening Force, Invalidates Due Process.

It has been demonstrated by the Supreme Court of the United States that door posting notice is unreliable and insufficient to meet the requirements of due process of individuals. It has been entered into evidence by the processing servers that it is not un-common for door posting to be removed by others, (as is what happen in my case -this case) therefore becoming an unreliable form of serving notice.

It noted that in Mennonite, Supra the United States Supreme Court dealt with the issue of posting notice on ones door when it cited one of it's earlier decisions thysly: In Green v. Lindsey, 456 U.S. 444 (1982) case centered around the common practice by the State of Kentucky was to leave posting, Court of Appeals noted that :

...while there may have been "a time when posting provided a surer means of giving notice than did mailing, [t]hat time has passed... The uncontradicted testimony by process servers themselves that posted summonses are not infrequently removed by persons other than those served constitutes effective confirmation of the conclusion that notice by posting `is not reasonably calculated to reach those who could easily be informed by other means at hand,'"Mullane supra, at 319

The reliability of Door Posting have come to the forefront before as having flaws. However, Appellees claimed never to have seen these posted notices; they stated that they did not learn of the eviction prcedding until they were served with writs of possesstion, executed after default judgments had been

entered against them, and after their opportunity for appeal had lapsed.

U S. SUPREME COURT , IN GREEN V.LINDSY, 456 U.S.444(1982)

FOUND:

(b) In light of the fact that appellees were deprived of a significant interest in....

...it was only necessary to serve notice "upon the thing itself." The sufficiency of the notice must be tested with reference to its ability to inform people of the pendency of proceedings that affect their interests. Pp. 450-451.

(c) Notices posted on the doors of tenants' apartments were "not infrequently" removed before they could be seen by the tenants. Whatever [456 U.S. 444, 445] the efficacy of posting notice on a door of a person's home in many cases, it is clear that, in the circumstances of this case, merely posting notice on the apartment door did not satisfy minimum standards of due process. Pp. 453-454.

(d) Neither the statute nor the practice of process servers provides for even a second attempt at personal service. The failure to effect personal service on the first visit hardly suggests that the tenant has abandoned his interest in the apartment...

"or as in my case the interest of my personal home."

THE COURT HELD:

....That there was undisputed testimony in this case that notices posted on the apartment doors of tenants are often remove by other tenants App 41-42

We conclude that in failing to afford appellees adequate notice of the proceedings against them before issuing final orders of eviction, the State has deprived them of property without the due process of law required by the Fourteenth Amendment. The judgment of the Court of

Appeals is therefore Affirmed.

My case is an exact carbon copy of this case. There is undisputed evidence

that another party admittedly withheld door posting where by "due process" was not served, hence its intended target was never made aware of impending tax sale of property.

Argument II - Whether Florida Statutes 197.522 has failed to Render Due Process When It Has Received All Mail Returned "Unclaimed".

The evidence by virtue of records showing that all Mail Was Returned to the County Tax Assessors Office is a matter of record and has been documented as fact. Many prior cases have dealt extensively with this issue in many previous cases, two detailed below.

Mullane v. Central Hanover Bank & Trust Co.

...The key focus is the "reasonableness" of the means chosen by the State. Mullane, 339 U.S., at 315. Whether a particular method of notice is reasonable depends on the outcome of the balance between the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." *Id.*, at 314.

In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314

(1950), the Court established that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

***[W]hen notice is a person's due, process which is mere gesture is not due process. The means must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it".

" We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315.

Justice Roberts Delivered the Opinion of the Court in Handing Down

Its Decision in the Case of Jones v. Flowers, 126 S.Ct, 1708(2006) Reversing the judgment of the Arkansas Supreme Court.

...Although the State may have made a reasonable calculation of how to reach, Jones, it had good reason to suspect that when the notice was returned, that Jones was "no better off than if the notice had never been sent...." Malone, supra, at 37. Deciding to take no further action is not what someone "desirous of actually informing" Jones would do; such a person would take further reasonable steps if any were available...

It is true that this Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent. See, e.g., Dusenbery, supra, at 168-169; Mullane, 339 U. S., at 314.

But we have never addressed whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice has failed. That is a new wrinkle, and we have explained that the "**notice required will vary with circumstances and conditions**." Walker v. City of Hutchinson, 352 U. S. 112, 115 (1956).

The rulings of these decisions must and do apply to this case.

The opinion of the Respondents stated that the mere compliance with requirements of Florida Statutes 197.522 is all that is required for the state to deprive a citizen of his or her property. In truth however absence of proper notice, then 197.522 violates the Constitution of the United States of the United States (Fourteen Admendment) and the Constitution of the State of Florida. Such as was outlined in the review of this case:

a singularly appropriate and effective way of **ensuring that a person who cannot conveniently be served personally** is actually apprised...
...of proceedings against him." Ante, at 452-453...

Such is not the case here, the State had knowledge of my residence address and made no attempt to have me personally served, prior to selling my property. I will site two examples, which are much more frivolous and trivial situations, whereas nevertheless, the state Mandates, **personal service**.

(1) When Respondents "deposition" to prepare their Quiet Title case against me, I was personally served. I see a great disparity with the reasoning behind a "deposition" meriting being personally served and not for tax sale.

2) What I can only describe as an anomaly it is must be noted that if I am to be sued over a \$100 in damage/debt suit that the court would not have jurisdiction to render a verdict against unless and until I had been served personally with process, and yet, according can have my property forcibly taken, which we all must concede has a much greater devastating results.

Argument III - Whether Current State Statute is Enacted and Yet Still Fails To Provide Due Process.

The Supreme Court nonetheless rejects some so called "established state statutes" procedures in certain circumstances as failing to provide constitutional protection, guaranteed to all its citizens under the 14th

Amendment of the U.S. Constitution. Along these same line of thought:

Quote another area from Mullane, supra by FL Supreme Court in

Dawson, Supra

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under all the circumstances, to apprise the interested

parties of the pendency of the action and to afford them an opportunity to present their objections.***[W]hen notice is a person's due, process which is mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."

In Singleton v. Eli B. Investment Corp., WL 2609468 (Fla. 4th DCA, 2007). Court referenced Mullane and stated in its review of this case :
Mullane v Central Hanover Bk & Trust, U.S. 306,314

...The continued by noting that whether a particular method of notice is reasonable calculated to provide adequate notice depends on "due regard for the practicalities and peculiarities of the case."

Even if in thinking along the lines of the lower trial judges mention that by my spouse knowing of impending tax sale, and also for argument sake, even if my husband was also a titleholder, the Trial Court still erred **in imputing his knowledge to me so as to find "notice" was adequate**. That is, "the consequences of failing to pay taxes re drastic enough s it is"...that "separate notice to each spouse" should be required. Terra Mar Capital, Inc. v Auxier, 694 So. 2d 779 (Fla 4 DCA 1997).

The District Court, in the case at bar made blatant determinations on material facts that were disputed at the summary judgment hearing. When two opposing sides file opposing affidavits with **disputed material fact** and there can rationally be more than one construction or interpretation of the facts, then the case cannot properly be resolve by summary judgement.

In respect to this the court have sided the follows:

Chhabra , 906 So.2d 1261 (Fla. 4th DCA 2005)

Any doubts must be ruled in favor of the nonmoving party. Id. that is, "[i] the record raises the slightest doubt that material issued could be present, that doubt must be resolved against the movant and **the motion for summary judgment must be denied**". (Emphasis added) Seal v Brown, 801 so. 2d 933 (Fla. 1st DCA 2001)

CONCLUSION

This Court Should review this case because of conflicts created where it is clear that that due process was lacking. (Strong Emphasis)

For all of the foregoing reasons expressed herein, Petitioner respectfully request that this Honorable Court to invoke this Courts jurisdiction.

Respectfully submitted,

Martha Valdez
Martha Valdez, Pre Se

CERTIFICATE OF SERVICE

I certify that on this 10th day of May, 2008 a true copy of the foregoing Jurisdictional Brief was sent by U.S. Mail to:

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Honorable Judge: Wells, JJ.
Third District Court Of Appeal
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Martha Valdez

Martha Valdez, Pro Se
Petitioner

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief is prepared in Times New Roman 14-pont font, and complies with the font requirement of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Martha Valdez Pro Se